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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,958	10/20/2005	Robert Casper	101648.55966US	3066

23911 7590 02/19/2008

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EXAMINER	
PINKNEY, DAWAYNE	
ART UNIT	PAPER NUMBER
2873	

MAIL DATE	DELIVERY MODE
02/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/525,958	CASPER ET AL.	
	Examiner	Art Unit	
	DAWAYNE A. PINKNEY	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 7-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 7-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/06/2007 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3, 7-12, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johansen et al. (US 5, 400, 175).

Regarding **claim 1**, Johansen discloses, a device for inhibiting melatonin suppressing light comprising:

means for selectively blocking light (Column 1, lines 21-25) having a wavelength less than at or about 530 nm (Column 3, lines 15-20, and Column 6, lines 44-51).

Johansen discloses the claimed invention except for selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light. It would have been obvious to one of ordinary skill in the art at the time the invention was made to selectively blocking more than 50 percent of incident wavelengths of

light and transmitting more than 50 percent of non-blocked wavelengths of light, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding **claim 2**, Johansen discloses, a device according to claim 1, wherein the means for selectively blocking light is an optical filter (Column 7, lines 13-19, Column 16, lines 28-30 and Claim 1).

Regarding **claim 3**, Johansen discloses, a device according to claim 2, comprising the optical filter, which includes a polarizing layer (Column 15, lines 28–37 and Column 16, lines 23-24, lines 49-51 and Claims 2 and 3).

Regarding **claim 7**, Johansen discloses, a device according to claim 3, wherein the polarizing layer is a polarizing film (Column 3, lines 15-25 and Column 15, lines 28-42).

Regarding **claim 8**, Johansen discloses, a device according to claim 1, wherein the device further comprises an ultraviolet light absorber (Column 1, lines 21-25, Column 2, lines 48-54 and Column 15, lines 28-31).

Regarding **claim 9**, Johansen discloses, a device according to claim 1, comprising at least one of eyewear, a light bulb, a light cover and a lens (Column 1, lines 21-25, Column 3, lines 15-16 and Column 16, lines 44-45).

Regarding **claim 10**, Johansen discloses, A lens operable by a user who is exposed to melatonin suppressing light at peak melatonin production times (Column 1, lines 21-25), the lens comprising an optical filter operable to selectively block light having a wavelength less than at or about 530 nm (Column 3, lines 15-20, Column 6, lines 44-51 and Column 15, lines 28-42).

Johansen discloses the claimed invention except for selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light. It would have been obvious to one of ordinary skill in the art at the time the invention was made to selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding **claim 11**, Johansen discloses, a lens according to claim 10, wherein the lens is incorporated in eyewear (Column 3, lines 15-16 and Column 16, lines 44-45).

Regarding **claim 12**, Johansen discloses, a lens according to claim 11, wherein the eyewear is selected from the group consisting of spectacles, goggles, contact lenses and safety glasses (Column 1, lines 21-25, Column 3, lines 15-16 and Column 16, lines 44-45).

Regarding **claim 17**, Johansen discloses, The use of a device according to claim 2, for the prevention or the suppression of melatonin production in a human, the filter being operable to selectively block light (Column 1, lines 21-25 and Column 15, lines 28–37), having a wavelength capable of suppressing melatonin production(Column 6, lines 44-51), from reaching the retina in a human (Column 17, lines 21-37).

Regarding **claim 18**, Johansen discloses, The use of a device according to claim 1, for the prevention or the suppression of melatonin production in a human, the filter being operable to selectively block light (Column 1, lines 21-25 and Column 15, lines 28–37), having a

wavelength capable of suppressing melatonin production(Column 6, lines 44-51), from reaching the retina in a human (Column 17, lines 21-37).

4. Claims 13-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Searfoss, III (US 6, 902, 296).

Regarding **claim 13**, Searfoss teaches, a light device (Column 2, lines 8-10) comprising an optical filter operable to selectively block light from the light device (Column 4, lines 60-65) having a wavelength capable of promoting melatonin production in a human of less than at or about 530 nm (Column 1, lines 21-43, Column 2, lines 49-51, Column 4, lines 60-66, and Column 5, lines 16-19).

Searfoss discloses the claimed invention except for selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light. It would have been obvious to one of ordinary skill in the art at the time the invention was made to selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding **claim 14**, Searfoss discloses, A light device according to claim 13, wherein the light device is chosen from an incandescent light source, a fluorescent light source or any other artificial light source (Column 4,lines 60-65).

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Searfoss, III (US 6, 902, 296).

The cited primary reference, Searfoss, remains as applied to **claim 13 above**.

The cited primary reference does not teach the optical filter is a coating on at least one surface of the device.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an optical filter that is a coating on at least one surface of the device because all light devices having light filtering properties include coatings (absorption, interference, etc.) that provide the light filtering.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirschner (US 6, 019, 476).

Regarding **claim 16**, Kirschner discloses, a light cover for use with a light device, the cover comprising: an optical filter operable to selectively block light from the light device (Column 1, lines 15-16) having a wavelength capable of suppressing melatonin production in a human (Column 1, lines 12-15 and lines 55-62), the cover being operable to releasably attach to the light source to channel the light emitted from the light source there through (Column 4, lines 22-23).

The cited primary reference does not teach that the optical filter is operable to selectively block light from the light device having a wavelength capable of suppressing melatonin production in a human of less than at or about 530 nm. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the optical filter is operable

to selectively block light from the light device having a wavelength capable of suppressing melatonin production in a human of less than at or about 530 nm to achieve the yielded predictable results of increasing melatonin production in a user or the light device (It is known to one of ordinary skill in the art that wavelengths of less than at or about 530 nm are effective in inhibiting melatonin production).

Furthermore, Kirschner discloses the claimed invention except for selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light. It would have been obvious to one of ordinary skill in the art at the time the invention was made to selectively blocking more than 50 percent of incident wavelengths of light and transmitting more than 50 percent of non-blocked wavelengths of light, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 7-15, and 17-18 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's arguments filed 11/06/2007 have been fully considered but they are not persuasive.

9. In response to applicant's arguments that Kirschner teaches away from a device that inhibits the suppression of melatonin. Examiner points out that it would have been obvious to one of ordinary skill in the art at the time the invention was made for the optical filter is operable to selectively block light from the light device having a wavelength capable of suppressing

melatonin production in a human of less than at or about 530 nm to achieve the yielded predictable results of increasing melatonin production in a user or the light device (It is known to one of ordinary skill in the art that wavelengths of less than at or about 530 nm are effective in inhibiting melatonin production).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAWAYNE A. PINKNEY whose telephone number is (571)270-1305. The examiner can normally be reached on Monday-Thurs. 8 a.m.- 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DaWayne A Pinkney/

Examiner, Art Unit 2873

02/11/2008

/Scott J. Sugarman/

Primary Examiner, Art Unit 2873